

**SUMMONS ON FOURTH AMENDED CROSS-COMPLAINT  
(CITACION JUDICIAL)**

**NOTICE TO CROSS-DEFENDANTS:  
(AVISO AL DEMANDADO):**  
SEE ATTACHMENT

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
Clerk of the Superior Court

FEB 08 2006

By: C. VAN PELT, Deputy

**YOU ARE BEING SUED BY CROSS-COMPLAINANT:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CITY OF SAN DIEGO,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER:  
(Número del Caso):  
GIC841845

Superior Court of California  
County of San Diego  
330 West Broadway  
San Diego, CA 92101  
Central Division

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Michael J. Aguirre, City Attorney (619) 533-5800 (619) 236-6018  
Donald McGrath II, Executive Assistant City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

DATE: FEB 08 2006  
(Fecha)

Clerk, by C. VAN PELT  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.50 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

SHORT TITLE: SDCERS v. City of San Diego and related Cross-Claims

CASE NUMBER:  
GIC841845

INSTRUCTIONS FOR USE

§ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.  
§ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

☐ Plaintiff ☐ Defendant ☐ Cross-Complainant ☒ Cross-Defendant

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM by and through its Board of Administration; RON SAATHOFF, JOHN TORRES, MARY VATTIMO; CATHY LEXIN; TERRI WEBSTER; SHARON WILKINSON; JOHN TORELL in his capacity as City Auditor and Comptroller; AND ROES 1-50, inclusive.

FEB 9 2006

By: C. VAN PELT, Deputy

MICHAEL J. AGUIRRE, City Attorney (CA Bar No. 60402)  
DONALD MCGRATH II, Executive Assistant City Attorney (CA Bar No. 44199)  
ANDRA DONOVAN, Deputy City Attorney (CA Bar No. 177792)  
EMILY B. RAGLAND, Deputy City Attorney (CA Bar No. 239401)  
Office of the City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, California 92101-4100  
Telephone: (619) 533-5800  
Facsimile: (619) 236-6018  
Attorneys for Defendant and Cross Complainant  
CITY OF SAN DIEGO

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

SAN DIEGO CITY EMPLOYEES'  
RETIREMENT SYSTEM, by and through its  
Board of Administration,

Plaintiff,

v.

SAN DIEGO CITY ATTORNEY MICHAEL J.  
AGUIRRE; THE CITY OF SAN DIEGO and  
DOES 1-100,

Defendants.

) Case No. GIC841845

) **FOURTH AMENDED**  
) **CROSS-COMPLAINT FOR**  
) **(1) DECLARATORY RELIEF**  
) **(COUNT ONE)**  
) **(2) DECLARATORY RELIEF**  
) **(COUNT TWO)**  
) **(3) WRIT OF MANDATE**

) I/C Judge: Hon. Jeffrey B. Barton  
) Dept.: 69  
) Action filed: January 27, 2005  
) Trial: Not Set

CITY OF SAN DIEGO,

Cross-Complainant,

v.

SAN DIEGO CITY EMPLOYEES'  
RETIREMENT SYSTEM, by and through its  
Board of Administration; RON SAATHOFF;  
JOHN TORRES; MARY VATTIMO; CATHY  
LEXIN; TERRI WEBSTER; SHARON  
WILKINSON; JOHN TORRELL in his capacity  
as City Auditor and Comptroller; AND ROES  
1-50, inclusive,

Cross-Defendants.

1 Cross-Complainant CITY OF SAN DIEGO ("City"), on behalf of all  
2 beneficiaries of the SAN DIEGO CITY EMPLOYEE'S RETIREMENT SYSTEM  
3 ("SDCERS"), the citizens of San Diego, and other governmental interests, complains as  
4 follows:

5 THE PARTIES

6 1. Cross-Complainant City is a municipal corporation with all municipal  
7 powers, functions, rights, privileges and immunities authorized by the Constitution and  
8 laws of the State of California. As a "charter city" under Article IX, of the California  
9 Constitution, the City has the power to make and enforce all ordinances and regulations  
10 with respect to municipal affairs. Charter provisions have the effect of legislative  
11 enactments and charter city ordinances and regulations regarding municipal affairs  
12 prevail over state laws covering the same issues.

13 2. The City of San Diego has an obligation to act in the public interest on  
14 behalf of its residents and of current and future SDCERS beneficiaries to ensure that the  
15 City's contributions are being made to an actuarially sound retirement system.

16 3. Cross-Defendant SDCERS is a public employee retirement system  
17 established pursuant to Article IX, Section 141 of the Charter to provide retirement,  
18 disability, and death benefits to its members. Pursuant to Charter Section 144, SDCERS  
19 is managed by a Board of Administration (the "Board").

20 4. Pursuant to Charter Section 145, all monies contributed by City employees  
21 or appropriated by the City Council are placed in a special fund in the City Treasury  
22 called the "City Employees' Retirement Fund," a trust fund to be held and used solely  
23 for the purpose of carrying out the provisions of Charter, Article IX. Monies in the trust  
24 fund may not be merged with any other funds of the City. No payments may be made  
25 from the City Employees' Retirement Fund except upon the Board's order.

26 5. California Constitution, Article XVI, Section 17 confirms that SDCERS'  
27 assets are a trust fund. There is no trust or plan document, however, separate from the  
28 Municipal Code provisions that govern the SDCERS fund.

1           6.     Cross-Defendant RON SAATHOFF ("Saathoff"), at all relevant times  
2 alleged in this operative complaint, is a former Board Member of SDCERS. Saathoff, at  
3 all relevant times to these proceedings, was and is a resident of the County of San  
4 Diego, State of California.

5           7.     Cross-Defendant JOHN TORRES ("Torres") is a current and former  
6 Board Member of SDCERS having been duly appointed by the Mayor of San Diego  
7 pursuant to the Charter. Torres, at all relevant times to these proceedings, was and is a  
8 resident of the County of San Diego, State of California.

9           8.     Cross-Defendant MARY VATTIMO ("Vattimo"), at all relevant times  
10 alleged in this operative complaint, is a former Board Member of SDCERS. Vattimo, at  
11 all relevant times to these proceedings, was and is a resident of the County of San  
12 Diego, State of California.

13           9.     Cross-Defendant CATHY LEXIN ("Lexin"), at all relevant times alleged in this  
14 operative complaint, is a former Board Member of SDCERS. Lexin, at all relevant times to  
15 these proceedings, was and is a resident of the County of San Diego, State of California.

16           10.    Cross-Defendant TERRI WEBSTER ("Webster"), at all relevant times alleged in  
17 this operative complaint, is a former Board Member of SDCERS. Webster, at all relevant times  
18 to these proceedings, was and is a resident of the County of San Diego, State of California.

19           11.    Cross-Defendant SHARON WILKINSON ("Wilkinson"), at all relevant times  
20 alleged in this operative complaint, is a former Board Member of SDCERS. Wilkinson, at  
21 all relevant times to these proceedings, was and is a resident of the County of San Diego, State  
22 of California.

23           12.    Cross-Defendant JOHN TORRELL ("Torrell"), at all relevant times alleged in  
24 this operative complaint, is the duly appointed Auditor and Comptroller for the City of San  
25 Diego. Torrell, at all relevant times to these proceedings, was and is a resident of the County of  
26 San Diego, State of California.

27           13.    Cross-Complainant is ignorant of the true names and capacities of Cross-  
28 Defendants sued herein as ROES I through 50, inclusive, and therefore sue these Cross-

1 Defendants by such fictitious names. Cross-Complainant will seek to amend this cross-  
2 complaint to allege the true names and capacities when so ascertained. Cross-Complainant is  
3 informed and believes and thereon allege that each of the fictitiously-named Cross-Defendants  
4 is negligently or otherwise responsible in some manner for the occurrences alleged in the  
5 Complaint, and that Cross-Complainant's damages herein alleged were proximately caused by  
6 the above-mentioned negligence or other tortious conduct.

7 14. Cross-Complainant is informed and believe and thereon allege that, at all times  
8 herein mentioned, each Cross-Defendant was an agent, servant and/or employee of each of the  
9 other Cross-Defendants, and was acting within the course and scope of said agency,  
10 representation and/or employment, and that their acts and deeds herein alleged were approved  
11 and ratified by each and all of the other Cross-Defendants herein.

#### 12 SDCERS' BOARD OF ADMINISTRATION

13 15. California Constitution Article XVI, Section 17 provides that Boards of  
14 Administration of public pension funds in the State of California have fiduciary  
15 responsibility for the assets of the public pension funds over which they preside. Such  
16 Boards of Administration are duty-bound to exercise the highest fiduciary duty to their  
17 members and to discharge their fiduciary duty solely in the interest of and for the  
18 exclusive purpose of (1) providing benefits to the retirement system participants and the  
19 beneficiaries, (2) minimizing employer contributions thereto, and (3) defraying  
20 reasonable expenses of administering the retirement system.

21 16. Under Charter Section 143, the SDCERS Board is responsible for  
22 adopting and approving the actuarial tables developed by SDCERS' actuary: the City's  
23 contributions are determined based on these actuarial calculations. San Diego  
24 Municipal Code section 24.1111 requires that the City's contribution to the retirement  
25 fund be "an amount as determined by the System's Actuary pursuant to the annual  
26 actuarial evaluation."

27 17. Charter Section 144 provides that the Board shall have exclusive control  
28 of "investment of such fund or funds as may be established" in the retirement system

and directs the Board, through its investment advisors and consultants, to invest, in the name of SDCERS, monies held in trust by the city employee retirement fund.

### LIMITATIONS ON THE BOARD'S AUTHORITY TO ACT

18. California Government Code section 1090 provides in relevant part: "[C]ity officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

19. California Government Code section 1092 provides:

Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member.

22. San Diego Municipal Code section 27.3560 prohibits any City official, including SDCERS trustees, from being financially interested in any contract made by them in their official capacity.

23. California Constitution Article XVI, Section 18 provides in relevant part that no city:

... shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose

24. Charter Section 99 provides in relevant part:

The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year. . .

The Section also provides:

No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.

## MANAGER'S PROPOSAL I

25. On or about January 21, 1996, SDCERS, through its Board, approved a contribution deferral agreement, commonly referred to as Manager's Proposal I ("MP I"). As a result of MP I, the City ended up contributing hundreds of millions of dollars less to the SDCERS pension trust fund than was required by city and state law including, but not limited to, the California Constitution, former Municipal Code section 24.0801 and Charter Section 143.

26. In conjunction with MP I, the San Diego City Council adopted implementing ordinances that enhanced the retirement benefits of City employees, creating millions of dollars of new pension benefits.

27. Former SDCERS Board members Saathoff, Webster, Torres, and Wilkinson, all herein named as Cross-Defendants, had a substantial financial interest in the retirement benefit enhancements set forth in MP I by virtue of the fact that they were also City employees at all times relevant to this action.

28. On or about June 21, 1996 the SDCERS Board voted in favor of a motion to adopt MP I. The motion passed.

29. At the time that the Board approved MP I, the Board knew or had reason to know that MP I created a pension funding scheme that was not actuarially sound and was therefore outside the scope of the Boards' authority.

30. In a July 16, 1996 memorandum, former SDCERS trustee John Casey complained that MP I was severely flawed. He stated, "The proposal as submitted by the Manager (MP I), i.e., a benefit increase for a reduction in actuarial rates, placed the Board in the position of negotiator. I submit that the Board function is to administer the benefits granted by the Plan Sponsor and not negotiate what the benefits should be with the Plan Sponsor. There is no authority for the Board to engage in this activity."

31. The Board, including the former Board members named as Cross-Defendants herein, made no disclosure in the SDCERS annual reports or financial statements of the changes to its retirement system resulting from MP I. Specifically, no mention was made that the City



1 had ceased contributing to SDCERS on an actuarially-determined basis but was instead  
2 contributing on a basis of an agreement entered into between the Board members and the City  
3 as described in MP I.

#### 4 MANAGER'S PROPOSAL II

5 32. In 2002, SDCERS, through its Board, decided to enter into a second contribution  
6 deferral contract with the City, commonly referred to as Manager's Proposal II ("MP II"). MP  
7 II was an expansion of the MP I scheme detailed above. As with MP I, the purpose of the MP  
8 II agreement was to provide the City with some relief from its contribution obligations.

9 33. As a part of the deal, the San Diego City Council agreed to adopt ordinances that  
10 would enhance the retirement benefits of City employees and create millions of dollars of new  
11 pension benefits. In addition to enhanced retirement benefits that reached all City employees,  
12 then-Board members and Cross-Defendants herein Saathoff and Webster were granted specific  
13 additional benefits that enhanced their personal retirement and did not flow to all City  
14 employees. All such consideration was contingent upon the Board's acceptance of MP II. In  
15 addition, all Board members serving at that time were granted indemnity for their acts and/or  
16 omissions arising from their service on the Board.

17 34. Former Board members and Cross-Defendants herein Saathoff, Webster,  
18 Wilkinson, Vattimo, Loxin, and Torres, and each of them, were City employees who had a  
19 substantial financial interest in the retirement benefit enhancements described above—including  
20 financial interests distinguishable from the interest of the public generally.

21 35. The Board had no legal duty to act with respect to MP II. In fact, by voting in  
22 favor of MP II, the Board was operating outside of and in contravention to its mandate to provide  
23 an actuarially sound system to SDCERS beneficiaries in violation of the California Constitution,  
24 Charter Section 143, and former Municipal Code section 24.0801, and their mandate to avoid  
25 conflicts of interest under Government Code 1090 et seq.

26 36. Under Municipal Code section 24.0907, the 13-member Board could have  
27 discussed and taken action on MP II without the participation of the six Board members who  
28 were financially interested in the enhanced retirement benefits provided under MP II.

1 37. On or about June 21, 2002, the Board passed a motion to agree in principal  
2 and/or to enter into the formal written agreement that became known as MP II. The motion  
3 passed.

4 38. None of the financially interested former Board members disclosed his or her  
5 potential financial interest or attempted to recuse him- or herself from the Board's actions  
6 regarding MP II.

7 39. The Board did not disclose in the SDCERS annual reports or financial  
8 statements the changes to its retirement system resulting from MP II. Specifically, no mention  
9 was made that the City had ceased contributing to SDCERS on an actuarially-determined basis  
10 but was instead contributing on a basis of an agreement entered into between the Board  
11 members and the City as described in MP II.

12 40. The SDCERS pension fund is currently at least \$1.7 billion underfunded at least  
13 in part as a result of this scheme, which started in 1996 and continues to this day.

14 41. By offering to exchange and exchanging things of value as recited hereinabove,  
15 SDCERS' Board members created an illegal and unenforceable contract.

16 **FIRST CAUSE OF ACTION**  
17 **DECLARATORY RELIEF (COUNT ONE)**

18 **(Against All Cross-Defendants)**

19 42. Cross-Complainant incorporates by reference and realleges paragraphs 1 through  
20 41 as though fully set forth herein.

21 43. An actual and justifiable controversy has arisen and now exists between Cross-  
22 Complainant and Cross-Defendant concerning their respective rights and duties in that Cross-  
23 Complainant contends that MP I and all benefits granted thereunder are illegal and void under  
24 Civil Code sections 1598 and 1667 because:

- 25 a. Its implementation violated and continues to violate Article XVI, Section  
26 17, of the California Constitution, which requires that the Board "shall  
27 administer the system in a manner that will assure prompt delivery of  
28 benefits to the participants and their beneficiaries."

- 1           b.     Its implementation resulted in a pension deficit in violation of Article  
2                   XVI, Section 18 of the California Constitution and Charter Section 99,  
3                   which provide that the City shall not incur any indebtedness or liability in  
4                   any manner or for any purpose exceeding in any year the income and  
5                   revenue provided for such year.
- 6           c.     Its implementation resulted in enhanced pension benefits for certain  
7                   Cross-Defendants in violation of Government Code section 1090 and San  
8                   Diego Municipal Code section 27.3560, which prohibit city officers or  
9                   employees from being financially interested in any contract made by  
10                  them in their official capacity, or by any body or board of which they are  
11                  members.

12           44.   Whereas Cross-Defendant contends that MP I is not illegal and void under Civil  
13   Code sections 1598 and 1667 although:

- 14           a.     Its implementation violated and continues to violate Article XVI, Section  
15                  17, of the California Constitution, which requires that the Board "shall  
16                  administer the system in a manner that will assure prompt delivery of  
17                  benefits to the participants and their beneficiaries."
- 18           b.     Its implementation resulted in a pension deficit in violation of Article  
19                  XVI, Section 18 of the California Constitution and Charter Section 99,  
20                  which provide that the City shall not incur any indebtedness or liability in  
21                  any manner or for any purpose exceeding in any year the income and  
22                  revenue provided for such year.
- 23           c.     Its implementation resulted in enhanced pension benefits for certain  
24                  Cross-Defendant in violation of Government Code section 1090 and San  
25                  Diego Municipal Code section 27.3560, which prohibit city officers or  
26                  employees from being financially interested in any contract made by them  
27                  in their official capacity, or by any body or board of which they are  
28                  members.

**SECOND CAUSE OF ACTION**  
**DECLARATORY RELIEF (COUNT TWO)**  
**(Against All Cross-Defendants)**

45. Cross-Complainant incorporates by reference and realleges paragraphs 1 through 41 and the first cause of action as though fully set forth herein.

46. An actual and justifiable controversy has arisen and now exists between Cross-Complainant and Cross-Defendants concerning their respective rights and duties in that Cross-Complainant contends that MP II and all benefits granted thereunder are illegal and void under Civil Code sections 1598 and 1667 because:

- a. Its implementation violated and continues to violate Article XVI, Section 17, of the California Constitution, which requires that the Board "shall administer the system in a manner that will assure prompt delivery of benefits to the participants and their beneficiaries."
- b. Its implementation resulted in a pension deficit in violation of Article XVI, Section 18 of the California Constitution and Charter Section 99, which provide that the City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year.
- c. Its implementation resulted in enhanced pension benefits for certain Cross-Defendants in violation of Government Code section 1090 and San Diego Municipal Code section 27.3560, which prohibit city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

47. Whereas Cross-Defendants contend that MP II is not illegal and void under Civil Code sections 1598 and 1667 although:

- a. Its implementation violated and continues to violate Article XVI, Section 17, of the California Constitution, which requires that the Board members

1 "shall administer the system in a manner that will assure prompt delivery  
2 of benefits to the participants and their beneficiaries."

3 b. Its implementation resulted in a pension deficit in violation of Article  
4 XVI, Section 18 of the California Constitution and Charter Section 99,  
5 which provide that the City shall not incur any indebtedness or liability in  
6 any manner or for any purpose exceeding in any year the income and  
7 revenue provided for such year.

8 c. Its implementation resulted in enhanced pension benefits for certain  
9 Cross-Defendants in violation of Government Code section 1090 and San  
10 Diego Municipal Code section 27.3560, which prohibit city officers or  
11 employees from being financially interested in any contract made by them  
12 in their official capacity, or by any body or board of which they are  
13 members.

### 14 THIRD CAUSE OF ACTION

#### 15 MANDATE

#### 16 (Against Cross-Defendants SDCERS, and Torrell)

17 48. Cross-Complainant incorporates by reference and realleges paragraphs 1 through  
18 41 and the First and Second Causes of Action as though fully set forth herein.

19 49. Notwithstanding that MP I and MP II are illegal and void, as more fully detailed  
20 above, Cross-Defendant SDCERS continues to issue warrants to the City Auditor and  
21 Comptroller, Cross-Defendant Torrell, for payment of the increased pension benefits illegally  
22 created under MP I and MP II. Cross-Complainant has requested that SDCERS cease issuing  
23 said warrants for payments, which requests have been refused and/or ignored by said Cross-  
24 Defendants.

25 50. Cross-Complainant has further requested that the Board recalculate, or to direct  
26 its agents and/or consultants to recalculate, proper pension benefit amounts, based solely upon  
27 agreements which are valid and legal and which do not undermine the actuarial soundness of  
28 SDCERS. Cross-Defendants have refused and/or ignored said requests.

1 51. Cross-Complainant has requested that Cross-Defendant City Auditor and  
2 Comptroller Torrell refrain from making further payment of the increased pension benefits  
3 illegally created under MP I and MP II and ignore any further warrants for said payments issued  
4 by SDCERS. Cross-Defendant Torrell refused to comply with these requests.

5 52. Unless SDCERS is enjoined from issuing any further warrant for payment of the  
6 pension benefits illegally created under MP I and MP II and directed to recalculate proper  
7 pension benefit amounts, based solely upon agreements which are valid and legal, and which do  
8 not threaten the actuarial soundness of SDCERS, and unless Cross-Defendant Torrell is  
9 enjoined from making further payment of the increased pension benefits illegally created under  
10 MP I and MP II, the City, its citizens and current and future SDCERS beneficiaries will suffer  
11 great and irreparable injury in that the pension fund will continue to be depleted to such extent  
12 that funds will not be available to pay legal benefits to future beneficiaries. The City and its  
13 citizens will suffer further great and irreparable harm in that the City will remain unable to  
14 return to the bond market for the cash infusion it needs to provide services for its citizens.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Cross-Complainant prays judgment against Cross-Defendants and each  
17 of them as follows:

18 I. For a judicial declaration that MP I and all benefits granted thereunder are illegal  
19 and void under Civil Code sections 1598 and 1667 because:

20 a. Its implementation violated and continues to violate Article XVI, Section  
21 17, of the California Constitution, which requires that the Board "shall  
22 administer the system in a manner that will assure prompt delivery of  
23 benefits to the participants and their beneficiaries."

24 b. Its implementation resulted in a pension deficit in violation of Article  
25 XVI, Section 18 of the California Constitution and Charter Section 99,  
26 which provide that the City shall not incur any indebtedness or liability in  
27 any manner or for any purpose exceeding in any year the income and  
28 revenue provided for such year.

1 c. Its implementation resulted in enhanced pension benefits for Board  
2 members in violation of Government Code section 1090 and San Diego  
3 Municipal Code section 27.3560, which prohibit city officers or  
4 employees from being financially interested in any contract made by  
5 them in their official capacity, or by any body or board of which they are  
6 members.

7 2. For a judicial declaration that MP II and all benefits granted thereunder are  
8 illegal and void under Civil Code sections 1598 and 1667 because:

9 a. Its implementation violated and continues to violate Article XVI, Section  
10 17, of the California Constitution, which requires that the Board "shall  
11 administer the system in a manner that will assure prompt delivery of  
12 benefits to the participants and their beneficiaries."

13 b. Its implementation resulted in a pension deficit in violation of Article  
14 XVI, Section 18 of the California Constitution and Charter Section 99,  
15 which provide that the City shall not incur any indebtedness or liability in  
16 any manner or for any purpose exceeding in any year the income and  
17 revenue provided for such year.

18 c. Its implementation resulted in enhanced pension benefits for Board  
19 members in violation of Government Code section 1090 and San Diego  
20 Municipal Code section 27.3560, which prohibit city officers or  
21 employees from being financially interested in any contract made by  
22 them in their official capacity, or by any body or board of which they are  
23 members.

24 3. For the disgorgement by Cross-Defendants Saathoff, Webster, Wilkinson,  
25 Vattimo, Lexin, and Torres of all benefits received by them that derived from MP I or MP II.

26 4. For a writ of prohibitory mandate enjoining SDCERS and/or its Board, agents,  
27 and/or employees from issuing any further warrant for payment of pension benefits illegally  
28 created under MP I and/or MP II;

1           5.     For a writ of prohibitory mandate enjoining Cross-Defendant Torre II from  
2 making any further payments of increased pension benefits illegally created under MP I and/or  
3 MP II;

4           6.     For a writ of mandate directing SDCERS and/or its Board, agents and/or  
5 employees to recalculate proper pension benefit amounts, based solely upon agreements which  
6 are valid and legal, and which do not threaten the actuarial soundness of SDCERS, and to issue  
7 warrants for payment in accordance therewith;

8           7.     For Cross-Complainant's costs of suit and any attorneys' fees or costs  
9 recoverable by law;

10          8.     For other such legal or equitable relief that is necessary to remedy or  
11 enforce the causes of action herein.

12  
13 Dated: *January 7, 2005*     MICHAEL J. AGUIRRE, City Attorney

14  
15  
16 By 

Don McGrath, Executive Assistant City  
Attorney

Andra Donovan, Deputy City Attorney

Emily B. Ragland, Deputy City Attorney

Attorneys for Defendant and Cross-Complainant  
CITY OF SAN DIEGO



MICHAEL J. AGUIRRE, City Attorney  
DON MCGRATH, II, Exec. Assistant City Attorney  
California State Bar No. 44139  
Office of the City Attorney, Civil Division  
1200 Third Avenue, Suite 1100  
San Diego, California 92101  
(619) 533-5800; Fax (619) 236-6018  
Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DECLARATION OF  
SERVICE BY MAIL

Case No. GIC841845  
*SDCERS v. Michael J. Aguirre, et al.*  
*And related Cross-Action*

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On Thursday, February 16, 2006, I caused to be served the following document described as:

1. COURTESY COPY OF SUMMONS ON FOURTH AMENDED CROSS-COMPLAINT
2. CROSS-COMPLAINANT CITY OF SAN DIEGO'S FOURTH AMENDED CROSS-COMPLAINT

in this action by placing the true copies thereof enclosed in a sealed envelope addressed as follows:

Ann M. Smith, Esq.  
TOSIDALE SMITH STEINER & WAX  
600 B Street, Suite 2100  
San Diego, CA 92101  
(619) 239-7200 / (619) 239-6048 (fax)  
Email: [asmith@tlsslaw.com](mailto:asmith@tlsslaw.com)

Attorneys for San Diego Municipal  
Employees Association

Reg A. Vitek, Esq.  
Michael A. Leone, Esq.  
SHELTZER CAPLAN McMAHON VITEK  
750 B Street, Suite 2100  
San Diego, CA 92101  
(619) 685-3003 / (619) 685-3100 (fax)  
Email:

Attorneys for San Diego City Employees'  
Retirement System

PROOF OF SERVICE BY MAIL  
CCP §§ 1013(A); 2015.5